

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

KRUMMHOLZ INTERNATIONAL INC.
and SWISSDIGITAL USA CO., LTD.,

Plaintiffs,

-against-

WENGER S.A.,

Defendant.

: Hon. William M. Skretny, U.S.D.J.

:
: Docket No.: 1:15-cv-86-WMS

:
: **Defendant’s Response to Motion of**
: **Plaintiffs Krummholz International, Inc.**
: **and Swissdigital USA Co., Ltd. to**
: **Consolidate Under Fed. R. Civ. P.**
: **42(a)(2)**

Defendant Wenger S.A. (hereinafter “Wenger”) hereby responds to the Motion of Plaintiffs Krummholz International, Inc. (“Krummholz”) and Swissdigital USA Co., Ltd. (“Swissdigital,” and collectively, “Plaintiffs”) to consolidate this proceeding with Docket No. 1:15-cv-00637-WMS, which was originally filed in the United States District Court for the District of Nevada on June 10, 2015, and transferred to this Court on July 16, 2015.

On August 13, 2015, Wenger filed a Motion to Dismiss this action on the grounds that this Court lacks subject matter jurisdiction to adjudicate Plaintiffs’ claims because, for the four declaratory judgment claims asserted by Plaintiffs (Second through Fifth Claims for Relief), there was not a case and controversy under 28 U.S.C. § 2201 when Plaintiffs filed the case on January 29, 2015, and because there is no jurisdiction for the Court to order a trademark registration cancelled (the gravamen of the First Claim for Relief) as a sole claim in a case. The Court has now set briefing on Wenger’s Motion to Dismiss, along with the Plaintiffs’ Motion to Consolidate on the same schedule.

If the Court grants Wenger's Motion to Dismiss, then Plaintiffs' Motion for Consolidation should be denied as moot, as this proceeding (Docket No.: 1:15-cv-86-WMS) would be dismissed in its entirety. If the Court denies Wenger's Motion to Dismiss and any portion of this case (Docket No.: 1:15-cv-86-WMS) is not dismissed, Wenger would not object to Plaintiffs' Motion for Consolidation.

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